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December 22, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 9, 2008

Case Number: TSO-0637

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should restore the individual's access authorization.

I. Background

The individual is a prospective employee of a DOE contractor facility. In the course of a routine background investigation conducted in May 2007, a number of sources reported that the individual had consumed alcohol to the point of intoxication during his college career. Exhibit E. The local DOE security office (LSO) then conducted a Personnel Security Interview (PSI) in June 2007 to inquire more deeply into the individual's drinking habits. Exhibit F. Because the PSI did not resolve the LSO's concerns about the individual's alcohol consumption, the LSO requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist interviewed the individual on August 10, 2007. *See* Exhibit 5. The LSO ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. Specifically, the DOE characterized this information as indicating that the individual has been, or is, a user of alcohol habitually to excess. Exhibit L (citing 10 C.F.R. § 710.8(j) (Criterion J)).²

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on August 5, 2008.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his father, his college dean of students, the alumnus advisor to his fraternity, a psychologist who evaluated the individual, and the DOE psychiatrist. The DOE Counsel submitted six exhibits prior to the hearing, and the individual presented 29 exhibits.

II. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due deliberation, I have determined that the

² Criterion J relates, in relevant part, to information that a person "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, including knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

individual's access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

III. The Notification Letter and the Security Concerns at Issue

As the basis for security concerns under Criterion J, the Notification Letter cites the individual's own estimation of his alcohol consumption during his college years, which he provided during his PSI. The Notification Letter cites, as further support, the DOE psychiatrist's evaluation of the individual as engaging in "excessive alcohol use."⁴

I find that the information set forth above constitutes derogatory information that raises legitimate questions regarding the individual's eligibility for access authorization under Criterion J. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

IV. Findings of Fact

Most of the relevant facts in this case are not in dispute. The individual attended college from 2003 to 2007, and began drinking alcohol as a freshman. He consumed alcohol, mainly beer, in social contexts at his fraternity. At his June 21, 2007, PSI, he told the interviewer that, at age 18, he would drink one to three beers once or twice a month, and while he did not feel intoxicated, he would "never drive." Exhibit 1 at 3. During the remainder of college, he told the interviewer, he would drink roughly six beers two to four times a month, becoming intoxicated 50 to 75 percent of the time. *Id.* at 4-5. He further stated that he had consumed 10 to 12 beers three times in his college career. *Id.* at 7. He also told the interviewer that his last intoxication had been in May 2007, "because . . . I was in a situation [college] where I was allowed the opportunity to do that. However, now my responsibilities have increased to a point where I am . . . no longer able to become intoxicated." *Id.* at 11. The individual explained the circumstances under which he will drive after consuming alcohol: he will drink no more than one beer and he then waits at least one hour before getting behind the wheel. *Id.* at 10. He stated that he has done this "maybe four or five times." *Id.* He has never been arrested for any alcohol-related misconduct, nor has he been subject to any discipline at work or at school for any alcohol-related behavior. His alcohol consumption has not caused him any family, physical, or mental health problems. *Id.* at 9; *see also* Exhibit 5 at 2 (Psychiatrist's Report).

⁴ In his final revision of his report, dated November 8, 2007, the DOE psychiatrist diagnosed the individual as suffering from "Alcohol Abuse, episodic, without dependency." Exhibit 5.

What is in dispute is the quantity of alcohol the individual consumed during his college years. The evidence in the record does not paint a clear picture of his consumption or the effects of his consumption. He maintains that, at the PSI, the amounts he reported overstated his true consumption, because he erred on the side of caution. He also contended at the hearing that some of the sources interviewed in the background investigation made broad statements about his alcohol consumption that led to misunderstanding about his actual consumption levels during college. After considering all the evidence, as discussed below, I find that the individual engaged in intermittent social drinking, at times to intoxication, during relatively short periods in each of his four years in college. During those same years, when he was not in the college environment, he consumed minimal amounts of alcohol in a socially responsible manner, and has continued to do since he has left that environment.

V. Hearing Testimony

A. The DOE Psychiatrist

At the hearing, the DOE psychiatrist testified as follows regarding his evaluation of the individual. During his interview with the individual, the individual provided information that was consistent with what he had provided at the PSI. *Id.* In addition to the individual's own recitation of his history of alcohol consumption, the DOE psychiatrist also relied on statements made by sources interviewed in the course of the individual's background investigation. Tr. at 81. These sources were friends of the individual, who had known him in high school or in college, and several stated that the individual had consumed alcohol and become intoxicated. Although the DOE psychiatrist relied on the individual's representations about the frequency of his episodes of intoxication, he stated that he never asked the individual what he meant by that term. *Id.* at 77. Nor did he have any understanding of what the sources questioned in the background investigation intended by that term, because he did not speak directly with any of them. Nevertheless, the DOE psychiatrist relied on that information, and formed the opinion that the individual "usually drank to intoxication" and "was developing some tolerance" to alcohol. *Id.* at 28. The individual also told him that he "might have overestimated how much he drank" during the PSI. *Id.* The psychiatrist stated that alcohol consumers "generally, clinically" underestimate their consumption rather than overestimate it, but he had no way of knowing whether this was true of the individual. *Id.* at 24. He nevertheless felt that the consumption figures the individual provided were of some value, as they came directly from him, and presented "what we in the psychiatric profession would regard as . . . considerable alcohol imbibing, the point of it beginning to become abusive." *Id.* at 25.

The DOE psychiatrist noted a "drinking proclivity" in the individual's family, having concluded from questioning the individual that his father had had a short period of excessive alcohol use and his brother had a history of "episodic alcohol use in the past." *Id.* at 26. According to the psychiatrist, research shows that such proclivity is frequently found in families of those suffering from alcohol abuse. *Id.* at 27. With respect to the individual's family history of alcohol use, the

DOE psychiatrist testified that his knowledge in this area was elicited solely from the individual himself. *Id.* at 26. On cross-examination, the DOE psychiatrist admitted that the individual told him only that his brother drinks alcohol at college and that his father drank alcohol in the past. *Id.* at 86, 88. The DOE psychiatrist further stated that the individual implied by that statement that his father had formerly drunk “a lot,” and that “it’s very typical for those who drink to cover up themselves and for them to cover up their families.” *Id.* at 88.

As a result of his evaluation, the DOE psychiatrist produced a report in which he diagnosed the individual with alcohol abuse, “episodic, without dependency,” and further determined that he “meets the 710.8(j) criteria of the Federal Registry [sic] for excessive alcohol use.” Exhibit 5 at 4. The DOE psychiatrist testified that he had referred to the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition (DSM), in reaching his diagnosis of the individual. *Tr.* at 21, 29.⁵ He further testified that he determined the individual met two of the criteria listed in the DSM definition of substance abuse. As evidence of the first, which the DOE psychiatrist identified as criterion A(2), he stated that the individual “would sometimes drive a car” after drinking. *Id.* at 29, 95.⁶ When asked what evidence he had that the individual drove while intoxicated more than once within a 12-month period, the DOE psychiatrist replied, “[T]he evidence is that, he . . . was intoxicated so frequently. And he didn’t always have a ride to where he needed to go after that. So, he would drive. That’s the evidence. It’s fairly easy to . . . say that at this point. And I think it’s very accurate.” *Id.* at 97. Finally, on cross-examination, the DOE psychiatrist stated that he recalled the individual explaining his self-imposed rule for driving after drinking: no more than one beer, and no sooner than one hour after consuming that beer. *Id.* at 103. He testified, however, that the individual was unable to tell him exactly how many beers he had drunk on the few occasions that he had driven after drinking. *Id.* Finally, he expressed his opinion that no one should operate a motor vehicle after drinking alcohol, regardless of the amount consumed: “I think the rule is that if . . . you’re actually drinking, you shouldn’t be driving.” *Id.* at 103, 104.

The DOE psychiatrist described the second substance abuse criterion that he applied to the individual as “failure or impairment to fulfill major obligation at work,” which corresponds to the DSM’s criterion A(1) for substance abuse. *Id.* at 29, 96.⁷ He offered as evidence meeting this criterion the fact that the individual’s behavior with respect to alcohol came to the attention

⁵ I note that his report mentions neither the DSM nor either of the criteria on which the DOE psychiatrist testified he based his diagnosis. For a diagnosis of substance abuse, the DSM states that a person should demonstrate a “maladaptive behavior . . . as manifested by one (or more) of” four specified criteria. DSM at 182.

⁶ Criterion A(2) reads as follows: “[R]ecurrent substance use [within a 12-month period] in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use).” DSM at 183.

⁷ Criterion A(1) reads as follows: “[R]ecurrent substance use [within a 12-month period] resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household).” DSM at 183.

of the DOE in the course of his application for his current position. *Id.* When questioned about evidence of repeated problems in the work environment, the DOE psychiatrist responded that the criterion should be applied flexibly, and focused on the amount of attention the DOE has placed on the individual's drinking habits, adding, "I'd say this is the tip of the iceberg, you know for [the individual]. And it should not be minimized." *Id.* at 98. On cross-examination, the DOE psychiatrist conceded that he knew of no difficulties the individual had encountered in fulfilling his employment or school duties relating to his alcohol use, including tardiness, discharge, and matters of discipline. *Id.* at 93.

In his report, the DOE psychiatrist also stated his opinion that the individual has engaged in "excessive alcohol use," and "has not had extensive sobriety, . . . which makes me doubt his ability to stop and become sober is reliable." Exhibit 5 at 3. At the hearing, the DOE psychiatrist explained his concern. Defining "sobriety" liberally as "avoiding intoxication," the DOE psychiatrist stated that the individual has "gone through periods of time when he has become intoxicated, on a regular basis, and even though he might have stopped at some point, and then resumed, this would disqualify him from a statement of he's been sober that period of time." Tr. at 74-75. When asked to define "excessive" in the context of alcohol use, the DOE psychiatrist stated that intoxication, which he defined as impairment of neurological and cognitive functions, met the definition, as could alcohol consumption to a lesser degree that is not "considered normal." *Id.* at 75-76, 99.

B. The Psychologist

The psychologist who evaluated the individual has considerable experience in conducting evaluations of this type, as he regularly reviews the suitability of candidates for parole officer, correctional officer and nuclear worker positions. *Id.* at 107. After interviewing the individual and administering two psychological tests that assess risky behavior, he concluded that the individual has not suffered from alcohol abuse nor has he used alcohol habitually to excess. *Id.* at 111, 115-16. He testified at the hearing that, in his opinion, the facts regarding the individual's alcohol consumption do not support a diagnosis of alcohol abuse.

The psychologist testified that he found the individual to be very credible in his responses, and discussed two areas of details. First, he stated that he believed the individual had in fact overstated his alcohol use during his PSI, in an effort to be honest. *Id.* at 118. "In his case, he was cautious about being believed that he made an honest estimate, but erred in the direction of too much rather than too little." *Id.* at 138. Second, the psychologist found credible the individual's explanation that during the soccer seasons and training periods preceding them, he drank very little alcohol because of the effect it has on physical performance, while during the off-season he drank more, occasionally to excess. *Id.* at 120.

According to the psychologist, the DSM definition of substance abuse requires that the use of the substance—in this case, alcohol—be a maladaptive behavior, and there is no evidence that it is maladaptive in the individual’s case. *Id.* at 122. He stated, “[I]f he had a dysfunctional alcohol style, which is what --- alcoholic use in a maladaptive way is all about, we would have to find some way in which it negatively affected him. And I find it highly unlikely that he could be misusing alcohol on a habitual basis and accomplish this [level of success].” *Id.* at 119-20. He testified that Criterion A(1), recurrent use resulting in failure to fulfill obligations, did not apply to the individual because in both sports and academics, his performance was exemplary. *Id.* at 123. Considering Criterion A(2), recurrent use in hazardous situations, or driving while intoxicated, the psychologist determined, relying on the individual’s statements as well as those of his sources, that he drank more than minimal amounts of alcohol only when he was in a safe situation and not going to drive. *Id.* at 123. Moreover, the psychologist testified that he found no evidence that the individual ever drank enough alcohol within a short enough time period to raise his blood alcohol level above the legal limit for driving; consequently, he believed the individual did not engage in physically hazardous behavior while impaired, nor exercise poor judgment in this regard. *Id.* at 146-47.

The psychologist also testified concerning the DOE psychiatrist’s determination that the individual engaged in “excessive alcohol use.” On cross-examination, the DOE Counsel asked the psychologist to consider Paragraph 22(c) of Guideline G of the Administrative Guidelines, which states, as one condition of alcohol consumption that could raise a security concern, “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” When asked whether that condition tracked the DSM diagnoses, the psychologist responded that it appeared to broaden the scope of the DOE’s alcohol-related concerns, so that “maladaptive alcohol behavior [is] to be included, even if it doesn’t quite fit DSM.” *Id.* at 142. He went on to say, however, that the individual’s alcohol consumption has never constituted binge drinking, and that he has seen no evidence that the individual was ever, even once, “highly maladaptively intoxicated.” *Id.* at 143.

C. The Individual

In his hearing testimony, the individual explained in detail his patterns of alcohol consumption at college. He played soccer for all four years of college. Training practices began in August and the fall season continued through mid-November. *Id.* at 195, 235. The spring training period and season ran from mid-February through the end of April. *Id.* at 236. In the individual’s freshman year, his soccer coach informed the team members that they were not to drink alcohol for 48 hours before a game; the prohibition was extended to 72 hours the next year. The individual complied with this rule. *Id.* at 199. Although he did drink alcohol during the soccer season, the individual testified, he drank much less than during the rest of the school year. *Id.* at 199. He estimated that in his first fall season on the team, he drank one to three beers, two or three times, in the course of a two-month period. *Id.* at 230. He also drank only minimally, if at all, during the weeks leading up to and including final examinations, and on weekends preceding

exams scheduled during the semester. *Id.* at 230, 236-38. Consequently, those portions of the academic year when he would feel free to consume larger amounts were limited: a month or so after the fall soccer season but before exams, and eight to ten weeks at the beginning of the second semester, before spring training began. *Id.* at 237. He contended that the statements made by his friends, and relied upon by the DOE psychiatrist, regarding his alcohol consumption, relate only to those portions of the year when they actually observed him drinking more than minimally. *Id.* at 233. He further stated that the estimates of beer consumption he provided during his PSI also focused on those short periods of the academic year when he drank more freely, rather than his consumption during soccer season or finals. *Id.* at 227, 229-30.

None of the friends' statements pertained to his alcohol consumption at home during the summers between academic years, because the friends had no interaction with him outside of the school environment. *Id.* at 233. He testified that he drank alcohol only "[o]n a minimal basis," when he was living at home and working at summer jobs, certainly not at the level he stated during his PSI. *Id.* at 210, 230.

The individual also testified about his alcohol consumption since graduating from college. The last time he consumed a significant quantity of alcohol appears to be at his graduation party in May 2007. Since that time, he states, he has a beer only occasionally. *Id.* at 217. He has not been intoxicated in the past year, and in fact has not consumed more than one or two beers on a single occasion during that period. *Id.* at 220-21.

The individual also testified concerning the DOE psychiatrist's rendering of his family's history of involvement with alcohol. He recalled that he responded to the DOE psychiatrist's questions on this topic by stating that his brother in college drinks alcohol, and that his father drank alcohol when he was in college. He did not tell the DOE psychiatrist that either drinks or drank excessively, despite the wording of the DOE psychiatrist's report. *Id.* at 216-17.

D. The Other Witnesses

Three additional witnesses testified at the hearing. Their testimony, taken as a whole, served to corroborate evidence already in the record. For example, the dean of students of the individual's college, after reviewing the individual's college record, verified that the individual was an excellent student in a rigorous course of study and not been subject to any discipline in his years at the college. Tr. at 154-55, 158. He also stated that the individual's fraternity was not among those fraternities with a reputation for alcohol improprieties. *Id.* at 161. The alumnus chapter advisor of the individual's fraternity testified that one of his roles was to train the fraternity members in alcohol awareness, and reiterated the fraternity chapter's reputation for restraint. *Id.* at 173. He also stated that he knew the individual personally, and was surprised that his alcohol consumption had come under scrutiny. *Id.* at 182. The individual's father testified that his son's college had never notified him that the individual's alcohol consumption had created any difficulties or problems for the college. *Id.* at 270.

VI. Hearing Officer Evaluation of Evidence

As an initial matter, I address the individual's family history of alcohol-related problems. In his report, the DOE psychiatrist expressed his concern that the individual's family history was positive for alcohol problems. He wrote that the individual's brother, currently in college, drinks alcohol excessively, and that his father drank excessively in the past. There is no support in the record for those statements, and the DOE psychiatrist has not convinced me that there is any independent factual basis for his conclusion in this regard.

With respect to the individual's consumption of alcohol in college, the evidence in the record demonstrates that it was considerably less than the representations available to the DOE psychiatrist. In formulating his diagnosis of alcohol abuse and his opinion of excessive alcohol use, the DOE psychiatrist relied on reports of the individual's alcohol consumption provided by the individual during his PSI and his psychiatric evaluation, and by college associates during his background investigation. For a number of reasons, I find those amounts to be inaccurate. The individual's estimates were overstated in both volume and frequency—volume, because the individual erred on the high side in an effort to be honest, and frequency, because he mistakenly gave the impression that the drinking habits he reported were constant throughout the year. For significant portions of each academic year, however, during the several months of the soccer season and for a number of weeks before final exams each semester, the individual drank little if any alcohol. During summers at home, as well, the individual drank little if any alcohol. As for his college friends' observations of his alcohol consumption, they reported a broad range of estimated consumption and are unreliable to the extent that they do not specify whether the level of involvement with alcohol continued unabated throughout the academic year or occurred only during those relatively short periods of the year that the individual was not in training or studying for examinations and therefore had the opportunity to interact with those friends. Consequently, though the evidence shows that the individual was intoxicated on several occasions during his college years, I find that those events occurred sporadically, separated by long periods of minimal and responsible drinking.

As stated above, the DOE psychiatrist based his diagnosis of alcohol abuse on the individual meeting two DSM criteria. First, he asserted that the individual had driven numerous times after consuming alcohol. The relevant DSM criterion is Criterion A(2), which specifically includes "driving an automobile . . . while impaired by substance use." The DOE psychiatrist lacked any factual basis for finding that the individual's behavior met this criterion, regardless of any dispute as to the extent of the individual's alcohol consumption. When questioned about drinking and driving during his PSI, the individual responded that he does so only if he has consumed no more than one beer and only after waiting at least an hour. Ex. 1 at 10 (PSI). He admitted to having driven a motor vehicle under this self-imposed rules four or five times. Ex. 1 at 10. The DOE psychiatrist makes no mention of drinking and driving in his report, but merely states that the individual has "no DUIs during his lifetime." Ex. 5 at 2. At the hearing, however, the DOE psychiatrist expressed his opinion that no one should ever drive a car after consuming any alcohol at all. Tr. at 103-04; *see* discussion of DOE psychiatrist's testimony, above. It was reasonable for the DOE psychiatrist to conclude from the facts in this case that the individual

has, on occasion, driven after consuming a single beer. But that assumption does not form a factual basis for concluding that the individual meets Criterion A(2). The DOE psychiatrist has not presented any reasons that his personal opinion regarding drinking and driving should be applied specifically in the individual's case, nor has he convinced me that his position on this matter should supplant the DSM criterion. As the psychologist testified, there is simply no evidence that the individual has ever driven a motor vehicle while impaired by alcohol. Tr. at 146-47. I am more convinced by the testimony of the psychologist, who emphasized that the individual exhibits no maladaptive behavior with respect to alcohol, and has experienced no negative effects from his pattern of alcohol use. Consequently, I reject that portion of the DOE psychiatrist's diagnosis of alcohol abuse that relies on the individual's driving while impaired by alcohol.

Second, he asserted that the individual had failed to fulfill a major obligation at work. The relevant DSM criterion in this regard is Criterion A(1). Again, the facts in evidence simply do not support this conclusion, regardless of any dispute as to the extent of the individual's alcohol consumption. The individual was an excellent student as well as a varsity soccer player for his college, and both during the summers between academic years and since his graduation, he has been gainfully employed. He has been subject to no discipline, either at school or on the job, nor demonstrated any tardiness, absenteeism, or poor performance. *See* Tr. at 154-58 (testimony of dean of students), 192 (testimony of individual regarding employment); Exhibits S, T (letters of recommendation from former employers). The DOE psychiatrist's sole support for his finding that the individual failed to meet a major obligation is the fact that his alcohol consumption raised a concern for the LSO at the time of his application for a position, which resulted in the present proceeding. I find this reasoning to be circular. Once the LSO determined that it could not resolve its concern about the individual's alcohol use, it referred the individual for a psychiatric evaluation, to resolve the matter. The DOE psychiatrist then found that the individual met one of the DSM criteria for substance abuse exclusively on the basis of the LSO's unresolved concern. It appears that, even if the LSO had been totally in error when it identified the concern, the DOE psychiatrist's evaluation would have justified the LSO's concern merely because the LSO had raised it, effectively placing a professional imprimatur on a baseless concern. This is clearly not what a psychiatric evaluation is intended to do; rather, it is to provide professional expertise to confirm or allay an unresolved security concern. Consequently, I reject that portion of the DOE psychiatrist's diagnosis of alcohol abuse that relies on the individual's failure to fulfill a major obligation at work.

With respect to the LSO's concern that the individual engages in excessive alcohol use, I must consider whether his behavior raises the types of concerns set forth in Guideline G of the Administrative Guidelines. Paragraph 22 of Guideline G lists seven conditions that could raise a security concern based on alcohol consumption. Of the seven, only one potentially applies to the individual's circumstances. Section 22(c) concerns "habitual or binge consumption of alcohol to the point of impaired judgment." The psychologist addressed these terms in his testimony. Tr. at 142-43. As I interpret the facts in this case in light of the explanation he provided, the individual did not engage in either habitual or binge consumption of alcohol. The DOE

psychiatrist's concern regarding excessive alcohol use arises from his interpretation of the facts before him to mean that the individual had had no extensive period of sobriety since he began drinking alcohol at college. That interpretation led him reasonably to a serious doubt that the individual was capable of controlling his drinking. Ex. 5 at 3. I reach a different conclusion, based on a different understanding of the individual's pattern of alcohol consumption, as presented at the hearing. I find that the individual drank to intoxication during strictly circumscribed periods of the academic year, specifically those periods when he was not involved in soccer and not studying for examinations. Moreover, outside the school environment, he rarely drank alcohol, let alone to intoxication. Based on this interpretation of the facts, I find that, even when the individual was at his peak of alcohol use, he spent most of his time drinking minimally and responsibly, if at all. In addition, the testimony of the individual and the psychologist indicates that the individual, now outside the college setting, currently consumes considerably less alcohol than he did in that environment, and is likely to maintain that pattern of alcohol use in the future.

It is my opinion that the factual underpinning of the DOE psychiatrist's diagnosis of alcohol abuse and finding of excessive alcohol use does not support the conclusions he reached. Moreover, even if those conclusions were valid, I would still find that the individual has mitigated the concerns raised under Criterion J and Guideline G through evidence of his current responsible attitude toward alcohol consumption.

VII. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth evidence to sufficiently mitigate the security concerns advanced by the LSO. I therefore find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: December 22, 2008